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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

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10 Misty Herringshaw, Individually and on)
11 Behalf of All Others Similarly Situated) Docket No.
12 Plaintiff,)
13 vs.)
14 Medical Data Systems, Inc. aka Medical)
15 Revenue Service)
and John Does 1-25)
16 Defendant(s).
17

)
CLASS ACTION COMPLAINT for
violations of the Fair Debt Collection
Practices Act, 15 U.S.C. § 1692 et seq.
DEMAND FOR JURY TRIAL

18 Plaintiff Misty Herringshaw (hereinafter, "Plaintiff"), a Nevada resident, brings this Class
19 Action Complaint by and through his attorney, The Law Offices of Robert M. Tzall against
20 Defendant Medical Data Systems, Inc. aka Medical Revenue Service (hereinafter "Defendant
21 MRS") individually and on behalf of a class of all others similarly situated, pursuant to Rule 23 of
22 the Federal Rules of Civil Procedure, based upon information and belief of Plaintiff's counsel,
23 except for allegations specifically pertaining to Plaintiff, which are based upon Plaintiff's personal
24 knowledge.

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INTRODUCTION/PRELIMINARY STATEMENT

1. Congress enacted the Fair Debt Collection Practices Act (the “FDCPA”) in 1977
2 in response to the “abundant evidence of the use of abusive, deceptive, and unfair debt
3 collection practices by many debt collectors.” 15 U.S.C. §1692(a). At that time, Congress was
4 concerned that “abusive debt collection practices contribute to the number of personal
5 bankruptcies, to material instability, to the loss of jobs, and to invasions of individual
6 privacy.” *Id.* Congress concluded that “existing laws...[we]re inadequate to protect
7 consumers,” and that “‘the effective collection of debts’ does not require ‘misrepresentation
8 or other abusive debt collection practices.’” 15 U.S.C. §§ 1692(b) & (c).

2. Congress explained that the purpose of the Act was not only to eliminate abusive
3 debt collection practices, but also to “insure that those debt collectors who refrain from using
4 abusive debt collection practices are not competitively disadvantaged.” *Id.* § 1692(e). “After
5 determining that the existing consumer protection laws · were inadequate.” *Id.* § 1692(b),
6 Congress gave consumers a private cause of action against debt collectors who fail to comply
7 with the Act. *Id.* § 1692k.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this class action pursuant to 15 U.S.C. § 1692 et seq. and 28 U.S.C. § 2201. The Court has pendent jurisdiction over the State law claims in this action pursuant to 28 U.S.C. § 1337(a).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1331(2)(2) as this is where the Plaintiff resides as well as where a substantial part of the events or omissions giving rise to this claim occurred.

NATURE OF THE ACTION

5. Plaintiff brings this class action on behalf of a class of Nevada consumers under §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (“FDCPA”), and

6. Plaintiff is seeking damages and declaratory relief.

PARTIES

7. Plaintiff is a resident of the State of Nevada, County of Clark, with an address of 6901 E Lake Mead Blvd, Apt 1046, Las Vegas, NV 89156.

8. Defendant MRS is a "debt collector" as the phrase is defined in 15 U.S.C. § 1692(a)(6) and used in the FDCPA with an address at 2001 9th Avenue, Suite 312, Vero Beach, Florida 32960 and may be served with process upon Corporation Service Company at 1201 Hays Street, Tallahassee, FL 32301.

9. Upon information and belief, Defendant MRS is a company that uses the mail, telephone, and facsimile and regularly engages in business the principal purpose of which is to attempt to collect debts alleged to be due another.

10. John Does 1-25, are fictitious names of individuals and businesses alleged for the purpose of substituting names of Defendants whose identities will be disclosed in discovery and should be made parties to this action.

CLASS ALLEGATIONS

8. Plaintiff brings this claim on behalf of the following case, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3).

9. The Class consists of:

a. all individuals with addresses in the State of Nevada;

- 1 b. to whom Defendant MRS sent an initial collection letter attempting to collect a
- 2 consumer debt;
- 3 c. that stated the consumer's dispute rights in a contradictory manner;
- 4 d. which letter was sent on or after a date one (1) year prior to the filing of this
- 5 action and on or before a date twenty-one (21) days after the filing of this
- 6 action.

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8 10. The identities of all class members are readily ascertainable from the records of
9 Defendants and those companies and entities on whose behalf they attempt to collect and/or
10 have purchased debts.

11 11. Excluded from the Plaintiff Class are the Defendant and all officer, members,
12 partners, managers, directors and employees of the Defendant and their respective immediate
13 families, and legal counsel for all parties to this action, and all members of their immediate
14 families.
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16 12. There are questions of law and fact common to the Plaintiff Class, which common
17 issues predominate over any issues involving only individual class members. The principal
18 issue is whether the Defendant's letter, violates 15 U.S.C. §§ 1692e, and 1692g.
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20 13. The Plaintiff's claims are typical of the class members, as all are based upon the
21 same facts and legal theories. The Plaintiff will fairly and adequately protect the interests of
22 the Plaintiff Class defined in this complaint. The Plaintiff has retained counsel with
23 experience in handling consumer lawsuits, complex legal issues, and class actions, and neither
24 the Plaintiff nor her attorneys have any interests, which might cause them not to vigorously
25 pursue this action.
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1 14. This action has been brought, and may properly be maintained, as a class action
2 pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is
3 a well-defined community interest in the litigation:

- 4 a. **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges,
5 that the Plaintiff Class defined above is so numerous that joinder of all
6 members would be impractical.
- 7 b. **Common Questions Predominate:** Common questions of law and fact exist
8 as to all members of the Plaintiff Class and those questions predominance over
9 any questions or issues involving only individual class members. The principal
10 issue is whether the Defendant's imposition of a processing fee, violates 15
11 USC §1692e and 1692g.
- 12 c. **Typicality:** The Plaintiff's claims are typical of the claims of the class
13 members. The Plaintiff and all members of the Plaintiff Class have claims
14 arising out of the Defendant's common uniform course of conduct complained
15 of herein.
- 16 d. **Adequacy:** The Plaintiff will fairly and adequately protect the interests of the
17 class members insofar as Plaintiff has no interests that are adverse to the absent
18 class members. The Plaintiff is committed to vigorously litigating this matter.
19 Plaintiff has also retained counsel experienced in handling consumer lawsuits,
20 complex legal issues, and class actions. Neither the Plaintiff nor her counsel
21 have any interests which might cause them not to vigorously pursue the instant
22 class action lawsuit.
- 23 e. **Superiority:** A class action is superior to the other available means for the fair
24 and efficient adjudication of this controversy because individual joinder of all
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members would be impracticable. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum efficiently and without unnecessary duplication of effort and expense that individual actions would engender.

15. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that the questions of law and fact common to members of the Plaintiff Class predominate over any questions affecting an individual member, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

16. Depending on the outcome of further investigation and discovery, Plaintiff may, at the time of class certification motion, seek to certify a class(es) only as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

FACTUAL ALLEGATIONS

17. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered above herein with the same force and effect as if the same were set forth at length herein.

18. Some time prior to October 17, 2019 an obligation was allegedly incurred to Desert Springs Hospital.

19. The Desert Springs Hospital obligation arose out of transactions in which money, property, insurance or services, which are the subject of the transaction, were primarily for personal, family or household purposes, specifically medical services.

20. The alleged Desert Springs Hospital obligation is a "debt" as defined by U.S.C. § 1692a(5).

21. Desert Springs Hospital contracted with Defendant MRS to collect the alleged debt.

22. Defendant MRS collects and attempts to collect debts incurred or alleged to have been incurred for personal, family or household purposes on behalf of creditors using the United States Postal Services, telephone and internet.

Violation October 17, 2019 Collection Letter

23. On or about October 17, 2019, Defendant MRS sent Plaintiff a collection letter (the “Letter”) regarding the alleged debt. **See Exhibit A.**

24. When a debt collector solicits payment from a consumer, it must, within five days of an initial communication, provide the consumer with a written validation notice, known as a “G notice,” which must include the following information:

- (1) the amount of the debt;
 - (2) the name of the creditor to whom the debt is owed;
 - (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be paid by the debt collector;
 - (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of the judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
 - (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. 15 U.S.C. § 1692g(a).

(emphasis added)

25. The Letter contains the required G-Notice.

1 26. However, the next paragraph states in pertinent part: "In order to respect these
2 important rights provided under the Fair Deb Collection Practices Act, this office will provide
3 the above rights, whether you provide notice of your dispute orally or in writing, within 30
4 days from receiving this notice."

5 27. The G- Notice contained in the letter states that a dispute must be in written form
6 to obtain verification of the debt and to be provided the name and address of the original
7 creditor.

8 28. Yet, the letter further states that a dispute may be made orally, which absolutely
9 contradicts the information contained in the G-Notice.

10 29. This is a false statement and contradicts the rights contained in the G-Notice which
11 unequivocally states that certain disputes must be in writing.

12 30. The least sophisticated consumer reading the two paragraphs could be easily
13 confused and misled by the contradiction between the G-Notice and the paragraph that
14 follows the G-Notice.

15 31. Defendant could have avoided this confusion by simply not requiring a writing
16 requirement in the G-Notice and then explaining that they are expanding the rights of the
17 consumer by allowing oral disputes as well.

18 32. Defendant instead chose to insert a template of a G- Notice which blatantly
19 contradicts the following paragraph.

20 33. Therefore, the statement made in the Letter that disputes can be made orally
21 contradicts the requirements of the G-Notice and make it unclear to the consumer whether all
22 disputes can be made orally or need to be in writing.

34. This false and inaccurate portion of the Letter is deceptive and misleading because it fails to advise Plaintiff of the proper method for exercising her validation rights under the FDCPA.

35. Plaintiff sustained an informational injury as she was not fully apprised of her rights and responsibilities necessary to properly exercise her options under §1692g.

36. Plaintiff effectively waived her rights to this statutorily available information because she was not properly informed of the “G-Notice” requirements set forth in the FDCPA.

37. As a result of Defendant's deceptive misleading and false debt collection practices, Plaintiff has been damaged.

COUNT I
**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C. §1692e
*et seq.***

38. Plaintiff repeats, reiterates and incorporates the allegations contained in the foregoing paragraphs with the same force and effect as if the same were set forth at length herein.

39. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e.

40. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.

41. Defendant violated said section by:

a. Making a false and misleading representation in violation of §1692e(10).

42. Due to the fact that Defendant's conduct violated Section 1692e et seq. of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages, costs and attorneys' fees.

COUNT II
VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT 15 U.S.C.
§1692g *et seq.*

43. Plaintiff repeats, reiterates and incorporates the allegations contained in the foregoing paragraphs with the same force and effect as if the same were set forth at length herein.

44. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692g.

45. Pursuant to 15 U.S.C. §1692g, when a debt collector solicits payment from a consumer, it must, within five days of an initial communication, provide the consumer with a written validation notice, known as the “G Notice,” which must include the following information:

- (1) the amount of the debt;
 - (2) the name of the creditor to whom the debt is owed;
 - (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
 - (4) a statement that if the consumer notifies the debt collector in writing within the forty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of the judgment against the consumer and a copy such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. 15 U.S.C. § 1692g(a).

46. Defendant violated this section by deceptively misrepresenting the requirements of §§1692g(a)(4) and (5) in omitting the requirement that the consumer must dispute or request information in writing as required under the FDCPA.

47. Plaintiff sustained an informational injury as her rights were presented in contradictory fashion.

48. Due to the fact that Defendant's conduct violated Section 1692g et seq. of the FDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages, costs and attorneys' fees.

DEMAND FOR TRIAL BY JURY

49. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff Misty Herringshaw, individually and on behalf of all others similarly situated, demands judgment from Defendant MRS, as follows:

1. Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative, and Robert Tzall, Esq. as Class Counsel;
 2. Awarding Plaintiff and the Class statutory damages;
 3. Awarding Plaintiff and the Class actual damages;

4. Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
5. Awarding pre-judgment interest and post-judgment interest; and
6. Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: June 30, 2020

/s/Robert M. Tzall
Robert M. Tzall
The Law Offices of Robert M. Tzall
Attorneys for Plaintiff